

THE OFFICE OF REGULATORY STAFF

DIRECT TESTIMONY

OF

CHRISTOPHER J. ROZYCKI

MAY 25, 2011



DOCKET NO. 2011-89-C

**Application of True Wireless, LLC for
Designation as an Eligible Telecommunications
Carrier Pursuant to 47 U.S.C. § 214(e)**

DIRECT TESTIMONY OF
CHRISTOPHER J. ROZYCKI
FOR
THE OFFICE OF REGULATORY STAFF

IN RE: APPLICATION OF TRUE WIRELESS, LLC FOR DESIGNATION AS AN
ELIGIBLE TELECOMMUNICATIONS CARRIER PURSUANT TO 47 U.S.C. § 214(e)

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND OCCUPATION.

A. My name is Christopher J. Rozycki, and my business address is 1401 Main Street, Suite 900, Columbia, South Carolina 29201. I am employed by the State of South Carolina Office of Regulatory Staff ("ORS") as a Program Manager in the Telecommunications Department.

Q. PLEASE STATE YOUR EDUCATIONAL BACKGROUND AND EXPERIENCE.

A. I have over thirty (30) years of experience. I have more than twenty (20) years in telecommunications business and regulation and nearly ten (10) years in the regulation of energy industries.

In the telecommunications industry I worked for a major interexchange company, AT&T (before it remerged with Southwestern Bell Telephone Company ("SBC") and BellSouth Telecommunications, Inc.), two competitive local exchange companies, a competitive broadband/cable TV company, and a telecommunications consulting firm. As my experience grew, I took on roles of increasing responsibility and leadership, often

1 crafting the regulatory policy for my company and presenting that position in meetings,
2 presentations, formal comments, and testimony.

3 My testimony and advocacy covered issues involving finance, economics, rate-of-
4 return, competitive entry, intercarrier compensation and access. I have also been
5 involved with the startup, development, and funding of telecommunications companies
6 and other businesses.

7 Additionally, I have worked for the federal government in an energy regulatory
8 organization (U.S. Department of Energy), and as a public utility consumer advocate for
9 a county government in Virginia.

10 I hold a master's degree in Economics from George Mason University in Fairfax,
11 Virginia and a bachelor's degree in Economics from Georgetown University in
12 Washington, DC.

13 **Q. WHAT ARE YOUR RESPONSIBILITIES AT THE OFFICE OF REGULATORY**
14 **STAFF?**

15 A. As Telecommunications Program Manager, I am responsible for all
16 telecommunications activities of ORS including the certification of new
17 telecommunications entrants, regulation and oversight of existing telecommunications
18 companies, management of the state universal service and Interim LEC funds, and
19 administration of the Lifeline Program.

20 **Q. HAVE YOU PROVIDED TESTIMONY IN OTHER REGULATORY**
21 **PROCEEDINGS?**

1 A. Yes. I have provided testimony on a variety of issues in Alabama, Delaware,
2 Florida, Georgia, Louisiana, Mississippi, New York, North Carolina, Pennsylvania, South
3 Carolina, Tennessee, Vermont, and Virginia.

4 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?**

5 A. The purpose of my testimony is to present the results of ORS's review of True
6 Wireless, LLC's ("True" or "Company") Application for Eligible Telecommunications
7 Carrier ("ETC") designation within the State of South Carolina.

8 **Q. ARE THE FINDINGS OF YOUR REVIEW CONTAINED IN THIS**
9 **TESTIMONY?**

10 A. Yes, my testimony provides ORS's findings and recommendations.

11 **Q. PLEASE EXPLAIN HOW YOU COMPILED THE INFORMATION FOR YOUR**
12 **TESTIMONY.**

13 A. I compared the information provided in True's application, direct testimony, and
14 responses to data requests with the requirements contained in Commission regulation
15 103-690, which sets forth the requirements for ETC designation.

16 **Q. PLEASE PROVIDE A BRIEF SUMMARY OF YOUR REVIEW OF TRUE'S**
17 **APPLICATION FOR ETC DESIGNATION.**

18 A. True is a wireless reseller that does not appear to be offering service in South
19 Carolina at this time. True's Application for ETC designation was filed with the
20 Commission on February 28, 2011. True is seeking ETC designation in South Carolina
21 in the areas served by AT&T South Carolina and Frontier Communications of the
22 Carolinas, solely for the purpose of obtaining Federal Universal Service Fund low-
23 income support.

1 **Q. DID ORS REQUEST TRUE WIRELESS' BUSINESS PLAN?**

2 A. Yes, to gain a better understanding of each applicant's approach to business and
3 operations in South Carolina, ORS requested a copy of the Company's business plan.
4 True indicated that the company has no formal business plan and the information for the
5 business plan was not currently available, but True anticipated its availability in the
6 future. As of May 25, 2011, this information has not been provided to ORS.

7 **Q. DID ORS REQUEST FINANCIAL INFORMATION FROM TRUE?**

8 A. Yes, to determine the viability of the True's current operations, and to verify
9 some of True's claims, ORS requested copies of the company's income statement,
10 balance sheet, and a statement showing the Company's capitalization and use of funds.
11 The Company indicated that this information was not available, but would be made
12 available on April 28, 2011. As of May 25, 2011, this information has yet to be provided
13 to ORS.

14 **Q. WHY IS IT IMPORTANT TO REVIEW BASIC FINANCIAL STATEMENTS OF**
15 **WIRELESS COMPANIES SEEKING ETC DESIGNATION IN SOUTH**
16 **CAROLINA?**

17 A. Wireless companies are not regulated in South Carolina and, unlike wireline
18 carriers, do not have to first obtain a Competitive Local Exchange Carrier ("CLEC")
19 certificate before they can apply for ETC designation. A demonstration that a wireless
20 carrier has the financial resources to operate in South Carolina is an important factor.

21 **Q. IS TRUE REQUESTING ETC DESIGNATION FOR THE PURPOSE OF**
22 **RECEIVING FEDERAL HIGH COST UNIVERSAL SERVICE FUND**
23 **SUPPORT?**

A. No. True is not seeking high cost support from the Federal Universal Service Fund.

Q. IS TRUE OFFERING SERVICE IN SOUTH CAROLINA USING EITHER ITS OWN FACILITIES OR A COMBINATION OF ITS OWN FACILITIES AND RESALE OF ANOTHER CARRIER'S SERVICES AS REQUIRED BY SECTION 214(E)(1) OF THE TELECOMMUNICATIONS ACT OF 1996 AND 47 C.F.R. 54.201(D)(1) AND (2)?

A. No. ORS learned during its review that True has not started offering service of any kind in South Carolina. While the Company asserts it will offer service using a combination of resale and its own facilities as required by Section 254(c) of the Telecommunications Act, it has not provided evidence that demonstrates it is capable of providing service through a combination of resale and its own facilities.

Q. HAS TRUE PROVIDED EVIDENCE THAT IT WILL OFFER THE SUPPORTED SERVICES USING ITS OWN FACILITIES OR THROUGH A COMBINATION OF ITS OWN FACILITIES AND RESOLD SERVICES OF ANOTHER CARRIER AND HOW IT WILL ROUTE TRAFFIC FOR SOUTH CAROLINA CUSTOMERS?

A. No. At this time, ORS cannot verify that True has facilities sufficient to meet the requirement for ETC designation in South Carolina.

Q. DOES TRUE OFFER ALL OF THE SERVICES SUPPORTED BY FEDERAL UNIVERSAL SUPPORT MECHANISMS AS REQUIRED BY SECTION 254(C) OF THE ACT AND BY 103-690(C)(a)?

1 A. No, it does not offer these services because it is not in operation in South
2 Carolina. Additionally, one of the nine required services found in 47 CFR 54.101 is
3 access to emergency services. (Access to emergency services includes access to services,
4 such as 911 and enhanced 911.) True currently does not provide this essential service in
5 South Carolina.

6 **Q. HAS TRUE DEMONSTRATED ITS FULL COMPLIANCE WITH ALL OF**
7 **SOUTH CAROLINA’S REGULATORY REQUIREMENTS?**

8 A. No. The following regulations require a demonstration by the Applicant.

9 A. 103-690.C (a)(2) Demonstrate its ability to remain functional in emergency
10 situations, including a demonstration that it has a reasonable amount of back-
11 up power to ensure functionality without an external power source, its ability
12 to reroute traffic around damaged facilities, and its capability of managing
13 traffic spikes resulting from emergency situations. The commission shall
14 determine on a case-by-case basis whether a carrier has demonstrated its
15 ability to remain functional in emergency situations;

16
17 B. 103-690.C (a)(3) Demonstrate that it will satisfy applicable consumer
18 protection and service quality standards. A commitment by wireless applicants
19 to comply with the Cellular Telecommunications and Internet Association's
20 Consumer Code for Wireless Service will satisfy this requirement. Other
21 commitments will be considered on a case-by-case basis.

22
23 With regard to Regulation 103-690.C (a)(2), True states in its direct testimony
24 that “through its facilities and its carrier vendor, commits to maintaining a reasonable amount
25 of back-up power without an external power source to ensure its service is able to function in
26 emergency situations, rerouting traffic around damaged facilities, and managing traffic spikes
27 resulting from emergency situations. Further, with respect to the portion of the supported
28 services that will be provided via resale of another carrier’s facilities, that carrier is a large,
29 national carrier that is itself subject to various regulatory requirements to remain functional in
30 emergencies. ” This response is prospective. More importantly this statement fails to

1 demonstrate how True will remain functional in emergency situations. The statement
2 suggests that True's unidentified national carrier has extended its ability to remain
3 functional in emergency situations to True; however, True has provided ORS no
4 evidence of this. True has not even identified the "large, national" carrier.

5 With regard to Regulation 103-690.C (a)(3), True states on page 10 of its direct
6 testimony that "In accordance with Commission Rule 103-690C(a)(1)(C)(3), True Wireless
7 will comply with all applicable state and federal consumer protection and service quality
8 standards. If designated as an ETC, True Wireless will continue to provide service on a
9 timely basis to requesting customers within the Designated Service Area. Further, True
10 Wireless will abide by the CTIA's Consumer Code for Wireless Service ("CTIA Code").
11 True Wireless has already adopted the CTIA Code and is committed to compliance with the
12 CTIA Code throughout its service areas, including in those areas where it is seeking
13 designation as an ETC." Since True is not currently operating within the State, ORS finds
14 that the Company has not demonstrated its ability to satisfy applicable consumer
15 protection and service quality standards. In addition, True has failed to describe either in
16 its Application or its testimony, how it would comply, going forward with the CTIA
17 requirements.

18 **Q. DID ORS REQUEST THAT TRUE PROVIDE SUPPLEMENTAL**
19 **DOCUMENTATION TO THE TWO-YEAR ADVERTISING PLAN?**

20 **A.** Yes, the Company provided a Two Year Advertising Plan with its application.
21 However, when asked to provide all brochures, pamphlets, or other material that will be
22 used in South Carolina, True could not produce these essential marketing materials, but

1 stated it would supplement its response. As of May 25, 2011, True's response was a one-
2 page ad/brochure.

3 **Q. SHOULD TRUE WIRELESS RECEIVE ETC DESIGNATION TO OFFER LINK-**
4 **UP SERVICE TO ITS CUSTOMERS?**

5 A. No. At this time no wireless reseller with ETC status has asked for or has received
6 Link-up reimbursement in South Carolina, and only one facilities-based wireless ETC has
7 received Link-up reimbursement in South Carolina. While wireless ETCs are allowed to
8 seek reimbursement for actual initial activation fees up to \$30 under the federal Link-up
9 guidelines, True has not identified the actual cost to provide the activation service. ORS
10 has asked True to provide this information but as of the date of this testimony, the
11 information has not been received. A wireless carrier should not be allowed to recover
12 unrealized Link-up expense.

13 **Q. HAS THE FCC ALLOWED WIRELESS COMPANIES TO REQUEST**
14 **REIMBURSEMENT FOR LINK-UP?**

15 A. Yes. In South Carolina, one facilities-based, wireless competitive ETC ("CETC")
16 has requested and received Link-up reimbursement from Universal Service
17 Administrative Company ("USAC"). The Link-up reimbursement was 50% of the
18 carrier's activation fee and was less than \$5.00 per customer. True identified in its
19 application that it would seek Link-up reimbursement for 50% of its customary \$60
20 activation fee or \$30 per customer which is the maximum a carrier is authorized to
21 request from USAC. It is interesting to note that wireless resellers seeking designation
22 and forbearance from the FCC have been required to agree to a list of conditions prior to

1 approval. One of those conditions is agreement that the wireless reseller will not seek
2 Link-up support from USAC.

3 **Q. DOES THE COMMISSION REGULATION 103-690 ESTABLISH A PUBLIC**
4 **INTEREST STANDARD THAT REQUIRES THE COMMISSION TO**
5 **CONSIDER THE BENEFITS OF INCREASED CONSUMER CHOICE?**

6 A. Yes. Regulation 103-690.C(b) requires the Commission to consider the benefits of
7 increased consumer choice of the applicant's service offering. When the Commission
8 certifies a low income ETC it will increase the consumer's ability to choose a type of
9 service that fits their needs and incent competing wireless carriers to offer better service
10 and terms. However, the pricing structure for Lifeline customers proposed by True is
11 higher than the prices of True's wireless Lifeline competitors and offers the consumer
12 less minutes per month.

13 **Q. DOES ORS RECOMMEND APPROVAL OF TRUE'S APPLICATION FOR ETC**
14 **DESIGNATION.**

15 A. No. True has failed to demonstrate its full compliance with all Commission
16 requirements for ETC designation.

17 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

18 A. Yes.

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2011-89-C

IN RE:

Application of True Wireless, LLC for
Designation as an Eligible Telecommunications
Carrier

)
)
) **CERTIFICATE OF**
) **SERVICE**
)
)
)

This is to certify that I, Pamela J. McMullan, have this date served one (1) copy of the **DIRECT TESTIMONY OF CHRISTOPHER J. ROZYCKI** in the above-referenced matter to the person(s) named below by causing said copy to be deposited in the United States Postal Service, first class postage prepaid and affixed thereto, and addressed as shown below:

John J. Pringle, Jr., Esquire
Ellis Lawhorne & Sims, PA
Post Office Box 2285
Columbia, SC, 29202



Pamela J. McMullan

May 27, 2011
Columbia, South Carolina